James Kenneth Eng Siew Goh (suing as administrator of the estate of Melissa Jane Goh Mei Feng, deceased) v Lee King Ong

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S6–22–1036 OF 2002
ABDUL WAHAB PATAIL J
12 MARCH 2009

Professions — Medical practitioners — Negligence — Duty of care — Duty to enquire regarding patient's allergies — Whether doctor negligent in prescribing medicine without enquiring on allergies — Whether doctor may rely on enquiries made by nurse regarding patient's allergies — Whether doctor liable where patient did not disclose allergies

Tort — Negligence — Causation — Patient prescribed with beta-blocker 'Blocadren' — Patient died due to breathing difficulties — Contra-indication to beta-blockers being prescribed to patients with asthma — Whether there was evidence that Blocadren caused respiratory attacks — Whether causation link between doctor's prescription and patient's death established

Tort — Negligence — Medical negligence — Patient died due to breathing difficulities — Patient did not disclose condition of asthma — Whether doctor negligent in prescribing beta-blocker 'Blocadren' — Whether doctor may rely on enquiries made by nurse regarding patient's allergies — Duty of patient to be candid and truthful to doctor — Whether duty of patient to disclose allergies arises where patient does not know intended prescription

Melissa Jane ('the deceased') had gone to the defendant's private medical clinic for the first time complaining of a fast pulse rate and hand tremors. The defendant prescribed to the deceased a beta-blocker known as 'Blocadren'. She was given four tablets of Blocadren and was instructed by the defendant to take a quarter of a tablet once or twice daily. The Blocadren was given for the purpose of slowing down the patient's pulse rate. The plaintiff claimed that after the deceased took the prescribed Blocadren at home a couple of hours later, the deceased suffered breathing difficulties, collapsed and was revived but remained in a coma and subsequently died some months later. It was not disputed that there is contra-indication to beta-blockers being prescribed to patients with asthma. The issue which arose for determination

was whether the defendant was negligent in prescribing Blocadren to the deceased. The defendant had not asked the deceased whether the deceased had asthma or was under treatment for asthma. The defendant had relied upon the answer in the negative obtained by his nurse at the reception who had been instructed to ask patients whether they had any allergies. The defendant also sought to show that the deceased had a history of not disclosing she had asthma. On the issue of causation, the plaintiff claimed that Blocadren has the effect of blocking medication prescribed for asthma from performing their desired function and as a result, the deceased died from a severe asthma attack after she had taken a ¼ tablet of Blocadren as prescribed.

Held, dismissing the plaintiff's action with costs:

(1) A patient has a duty to be candid and be truthful to the doctor. If the patient was not candid and truthful, the defendant would have a complete defence (see para 22).

(2) Since only the defendant would have known what he intended to prescribe and the possible contra-indications of such prescription, in this case asthma, it was the defendant who would have known if he needed to know if the patient had asthma and how real a risk it was. Not knowing what the doctor was going to prescribe and even if the patient did, could not be expected to know the contra-indications, the deceased could not be expected to have known that there was a possible contra-indication where the defendant as a doctor needed to know if she had asthma and if so how serious it was (see paras 27 & 29).

(3) It is a basic duty of care that is owed by a prescribing doctor to ask a patient before prescribing any medication for which there is possible contra-indication, as to whether the patient has any of the conditions that are contra-indicated, such as allergy, illness, condition or other medication being taken (see para 30).

(4) The deceased had a severe respiratory attack. No other cause of death was indicated. Thus, it was safe to conclude that the collapse and coma of the deceased resulted from inability to breathe, consistent with a severe respiratory attack. There was no evidence that Blocadren itself causes or triggers respiratory or asthma attacks. Therefore, it could not be concluded upon a balance of probabilities that it was the Blocadren that prevented medication having effect for the attack suffered by the deceased (see paras 36, 38 & 46).

[Bahasa Malaysia summary

Melissa Jane ('si mati') telah pergi ke klinik perubatan swasta defendan buat

kali pertama dan mengadu mengenai kadar denyutan nadi yang cepat dan tangannya yang terketar-ketar. Defendan mempreskripsikan si mati ubat penyekat-beta yang dikenali sebagai 'Blocadren'. Dia diberi empat biji pil Blocadren dan telah diarahkan oleh defendan untuk mengambil satu perempat sebiji pil sekali atau dua kali sehari. Blocadren diberi untuk tujuan memperlahankan kadar denyutan nadi pesakit. Plaintif mendakwa bahawa selepas si mati mengambil Blocadren yang dipreskripsikan tersebut di rumah beberapa jam kemudian, si mati mengalami kesukaran bernafas, rebah dan telah dipulihkan kembali tetapi berada dalam koma dan meninggal dunia beberapa bulan kemudian. Ia tidak dipertikaikan bahawa terdapat tanda-tanda kontra (contra-indication) kepada penyekat-beta yang dipreskripsi kepada pesakit-pesakit asma. Isu yang timbul untuk penentuan adalah sama ada defendan cuai dalam memberikan Blocadren kepada si mati. Defendan tidak bertanyakan si mati sama ada dia mengidap penyakit asma atau sedang menjalani rawatan untuk penyakit asma. Defendan telah bergantung atas jawapan negatif yang diperoleh oleh jururawatnya yang berada di kaunter pendaftaran yang telah diarahkan untuk bertanya kepada pesakit-pesakit sama ada mereka mempunyai apa-apa alahan. Defendan juga cuba menunjukkan bahawa si mati mempunyai kebiasaan untuk tidak mendedahkan bahawa dia mempunyai penyakit asma. Mengenai isu penyebab, plaintif mendakwa bahawa Blocadren mempunyai kesan menyekat rawatan yang diberikan untuk asma daripada berfungsi seperti yang sepatutnya dan akibatnya, si mati meninggal dunia disebabkan oleh serangan asma yang teruk selepas dia mengambil 1/4 daripada sebiji Blocadren seperti diarahkan.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Seseorang pesakit mempunyai tanggungjawab untuk berterus terang dan jujur kepada doktor. Jika pesakit tidak berterus terang dan jujur, defendan pasti akan mempunyai pembelaan yang sepenuhnya (lihat perenggan 22).

(2) Oleh sebab hanya defendan sahaja yang tahu apa yang dia ingin preskripsikan dan apakah tanda-tanda kontra preskripsi sedemikian, dalam kes ini penyakit asma, hanya defendan yang mengetahui jika dia perlu mengetahui sama ada pesakitnya mempunyai penyakit asma dan sebesar mana risiko yang dihadapi. Tanpa mengetahui apa yang doktor akan preskripsikan dan walaupun jika pesakit itu tahu, dia tidak mungkin dijangka mengetahui tanda-tanda kontra tersebut, si mati tidak boleh dijangka untuk mengetahui bahawa terdapat satu kemungkinan tanda-tanda kontra di mana defendan sebagai seorang doktor perlu mengetahui sama ada dia mempunyai penyakit asma dan setakat mana ia serius (lihat perenggan 27 & 29).

(3) Ia adalah satu kewajiban berhati-hati asas seorang doktor untuk bertanyakan seorang pesakit sebelum mempreskripsikan sebarang ubat di mana yang terdapat kemungkinan tanda-tanda kontra, sama ada pesakit tersebut mempunyai sebarang keadaan yang menggalakkan tanda-tanda kontra itu, seperti alahan, penyakit, atau keadaannya atau pengambilan ubat-ubatan lain (lihat perenggan 30).

(4) Si mati telah mengalami serangan kesesakan pernafasan yang teruk. Tiada sebab lain bagi kematian telah ditunjukkan. Oleh itu, adalah selamat untuk menyimpulkan bahawa kerebahan dan keadaan koma si mati disebabkan oleh ketidakupayaan untuk bernafas, konsisten dengan serangan kesesakan pernafasan teruk. Tidak ada bukti bahawa Blocadren sahaja boleh menyebabkan atau mencetuskan serangan kesesakan pernafasan atau penyakit asma. Oleh itu, ia tidak boleh disimpulkan atas imbangan kebarangkalian bahawa Blocadren yang menghalang keberkesanan ubat-ubatan untuk serangan yang dialami oleh si mati (lihat perenggan 36, 38 & 46).]

Notes

For a case on medical negligence, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1094.

For cases on causation, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 851–869.

For cases on negligence, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1624–1633.

Cases referred to

Bolam v Friern Hospital Management Committee [1957] 2 All ER 118, HL (refd)

Bolitho (administratix of the estate of Bolitho, deceased) v City and Hackney Health Authority [1997] 4 All ER 771, HL (refd)

Bolton & Ors v Stone [1951] 1 All ER 1078, HL (refd)

Foo Fio Na v Dr Soo Fook Mun & Anor [2007] 1 MLJ 593, FC (refd)

Americk Sidhu (Isharidah, Ho, Chong & Menon) for the appellant.

PS Ranjan (MS Dhillon with him) (PS Ranjan & Co) for the respondent.

Abdul Wahab Patail J:

[1] This case involves a patient, Melissa Jane Goh Mei Feng ('the deceased'), who had gone to the private medical clinic operated by the defendant Lee King Ong ('the defendant'). The deceased had gone to the defendant's clinic on that day, 28 July 1999 for the first time complaining of a fast pulse rate and hand tremors.

[2] On that day, the defendant prescribed to the deceased a beta-blocker known as 'Blocadren'. She was given four tablets of Blocadren and was instructed by the defendant to take a quarter of a tablet once or twice daily. The Blocadren was given for the purpose of slowing down the patient's pulse rate. It is the case for the plaintiff that after the deceased took the prescribed Blocadren at home a couple of hours later, the deceased suffered; breathing difficulties, collapsed, was revived at the Pantai Medical Center, but remained in a coma from which she did not recover and died in Dublin some months later.

[3] Having heard the parties on liability, a direction was given on 6 December 2005 to the parties to proceed to the question of quantum. The direction was given considering the nature of the heads of claim that was relied upon, and to determine if a trial is necessary thereon. Mr PS Ranjan is right that the court had not rendered a decision on liability.

[4] Mr PS Ranjan submitted:

(a) On causation of the asthma attack including effect of beta-blockers, Ativan and Blocadren upon an asthmatic person, with references to medical literature on causation;

(b) That the deceased had well-controlled asthma, tended to hide the fact she had asthma;

(c) The patient's duty to be candid and truthful with the doctor;

(d) That the defendant did not have knowledge that the deceased had asthma;

(e) On reasonable foreseeability of damage;

(f) That there was no duty in law to warn of the risk of injury arising out of medical treatment unless the risk is a 'material' risk.

[5] Mr PS Ranjan concluded his further submission as follows:

156 It is submitted that in the present case, 'close scrutiny, evaluation and logical analysis' of the evidence, including the factual, the medical and the expert evidence, shows as follows:

156.1 that the deceased was not an asthmatic patient at the time that she saw. the defendant;

156.2 that, if she was, her asthma was well-controlled and raised no concerns;

156.3 that if she was an asthmatic patient, she had suppressed such history from the defendant and other doctors and had asked no questions about complications arising from her alleged condition;

A 156.4 that Blocadren may properly be given to patients suffering from asthma, especially well-controlled asthma;

156.5 that, if the deceased was suffering from uncontrolled asthma, Blocadren may still be prescribed to her but with caution;

B 156.6 that it was safe enough to advise her to take only a quarter tablet of Blocadren;

156.7 that the risk of the deceased suffering a violent reaction was too remote and therefore was not a 'material risk';

C 156.8 that if it was a material risk, the defendant's therapeutic, privilege. justified withholding a warning of the risk, in view of the deceased's longstanding untreated condition, and the extreme worry revealed by her mother;

D 156.9 that the Blocadren did not cause the pleaded damage; and

156.10 that the pleaded damage was not reasonably foreseeable.

157 The claim should be dismissed with costs.

E **[6]** It is trite that to succeed as to liability in actions relying upon negligence as a cause of action, it is necessary to prove:

(a) Existence of a duty of care;

(b) Breach of that duty of care;

F

(c) Causation, that the negligent act caused the pleaded damage; and

(d) Forseeability, that the pleaded damage is reasonably forseeable.

EXISTENCE OF DUTY OF CARE

G

[7] It is not disputed that the deceased had come to the defendant's clinic to seek medical attention and that it was given. The duty of care as between a doctor and his patient therefore arose.

H

BREACH OF THAT DUTY OF CARE

[8] The disposal of this action was delayed at the request of counsel on the grounds that the issue of the appropriate test to be applied in cases involving I medical negligence was before the Court of Appeal and later the Federal Court.

[9] On 6 December 2005 the Federal Court delivered its decision in *Foo Fio Na v Dr Soo Fook Mun & Anor* [2007] 1 MLJ 593 where the *Bolam* test,

appeared to be rejected. At the same time the Federal Court relied upon *Bolitho (administratix of the estate of Bolitho, deceased) v City and Hackney Health Authority* [1997] 4 All ER 771.

[10] The more correct view is that *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118 ('the *Bolam* test') was distinguished by the Federal Court. The *Bolam* test was formulated as follows:

> A doctors is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that medical act... Putting is the other way round, a doctor is not negligent, if he is acting in accordance with such practice merely because there is a body of opinion that takes a contrary view.

[11] The test recognises that the doctor has to exercise professional judgment as to the appropriate treatment, short of which a finding of negligence may be indicated, from what may be different bodies of medical opinion, and it is therefore not for the court to decide the proper course of treatment.

[12] I bear in mind also that the question whether there was negligence should not be judged with the benefit of hind sight but must be as at the time the action was taken.

[13] The evidence before the court shows that the deceased was asked by the nurse at the reception when her particular was taken as to whether she had allergies. The nurse had recorded her answer as negative. It is not the plaintiff's case that the nurse had wrongly recorded the answer by the deceased.

[14] After examination of the deceased with her mother present in the consulting room and relying on the answer that the deceased had no allergies, the defendant prescribed Blocadren for her condition.

[15] It is not disputed that Blocadren is a beta-blocker and there is contra-indication to beta-blockers being prescribed to patients with asthma.

[16] The general issue is whether the defendant was negligent in prescribing Blocadren to the deceased.

[17] In seeking to rely upon the *Bolam* test, considerable effort was expended to adduce evidence that there is body of medical practice that Blocadren can and have been prescribed to patients with asthma. That there is such practice has not been contradicted by counsel for the plaintiff:

A **[18]** On the evidence of the expert witnesses before me, I accept that Blocadren is nevertheless prescribed to asthmatic patients where there is relatively little risk, for example where the asthma is well-controlled. I would accept that it is prescribed with caution even if there is material risk, where the circumstances are such that it is necessary.

B

[19] But the pertinent issue in this case is not about whether Blocadren can be prescribed for the condition complained of by the deceased. It is more basic than that. Scrutiny of the evidence shows that the defendant, intending to prescribe Blocadren, did not ask the deceased or her mother who was present, whether the deceased had asthma or was under treatment for asthma. The defendant had relied upon the answer in the negative obtained by his nurse at the reception who had been instructed to ask patients whether they had any allergies. These are in my view two very different questions.

D

[20] The defendant sought to show that the deceased had a history of not disclosing she had asthma. Great pains were taken by counsel to establish that assertion. It was disputed. I find on the evidence before the court that it shows the deceased may have been reluctant to disclose she had asthma, but it also appears this was more so in relation to employment rather than treatment.

[21] Having considered the testimony before me, I accept that the defendant had relied upon the answer given to the nurse by the deceased that she had no allergies, and the defendant had not asked the deceased or her mother whether the deceased had asthma, let alone whether it was under control or not.

G **[22]** It is true that if the defendant had asked the deceased whether she had asthma, she could have lied, but equally she could have told the truth. A patient has a duty to be candid and be truthful to the doctor. If the patient was not candid or truthful, the defendant would have a complete defence. If she had told the truth the defendant could then have gone on to determine whether there was a material risk or not, and whether in the circumstances it was necessary to take the risk, before prescribing Blocadren.

[23] Given that the defendant did not ask the deceased if she had asthma, the issue whether the defendant as the doctor had been misled by untruthful answers given or suppression of information, by his patient, does not arise except as a flight of fancy. Whether the deceased had in the past suppressed the fact she had her asthma or not, although it is pertinent to note if there were suppression it was in employment related and not illness related medical examination, is irrelevant for she was not specifically asked if she had asthma.

[24] Since the defendant did not specifically ask the deceased or her mother if the deceased had asthma, the following submission by counsel that it was necessary treatment had little foundation if any on the facts of this case:

> 126 In the present case, the Blocadren was necessary treatment. It could be given to an asthmatic patient. It did not pose a material risk to the life of the deceased. Even if it posed a material risk, the defendant's therapeutic privilege justified witholding a warning of risk in the best interests of the patient. The medical evidence shows that the giving of the Blocadren was necessary treatment.

[25] Without knowing if the deceased had asthma or not, and how often and how serious the attacks were, the defendant could not have considered what the risk was and whether the therapeutic need was such the risk should, be taken. The submission is therefore futile. It is not a case of a professional judgment-call by a doctor between different medical practice, but a failure of exercise of basic professional judgment since the defendant did not ascertain the basic facts he needed to know before exercising his professional judgment as to the prescription.

[26] I have also considered whether in light of the duty of a patient to be candid and truthful, the deceased should have told the defendant she had asthma, how serious it was, how often and how recent she had it.

[27] Since only the defendant would know what he intended to prescribe, and the possible contra-indications of such prescription, in this case asthma, it is the defendant who would know if he needed to know if the patient had asthma and how real a risk it was. A patient would have no way of knowing even if she was told she was being prescribed Blocadren.

[28] Obviously, there cannot be any practice that a patient is assumed to be not asthmatic and that it is not necessary to ask, because the practical effect of that means that medication can be prescribed without question regardless, of possible contra-indications. If there was such a practice, it would establish the argument for medication to be dispensed not by the prescribing doctors but by pharmacists who could become a second line to alert patients of possible contra-indications.

[29] Not knowing what the doctor was going to prescribe and even if the patient did, could not be expected, to know the contra-indications, neither the deceased nor her mother could be expected to have known that there was a possible contra-indication where the defendant as a doctor needed to know if she had asthma and if so how serious a risk it was.

A **[30]** It is plain it is a basic duty of care that is owed by a prescribing doctor to ask a patient before prescribing any medication for which there is possible contra-indication, as to whether the patient had any of the conditions that are contra-indicated, such as allergy, illness, condition or other medication being taken.

B

[31] The result of failure on the part of the defendant to ask the deceased or her mother specifically is that the defendant did not know whether the deceased had asthma at all, let alone, well-controlled asthma, such as would defend his prescription of Blocadren. Without discovering that the deceased C has asthma, the defendant could not have known how likely the deceased was going to have an attack and if so how serious it would be in order to make a professional judgment whether or not to prescribe Blocadren.

D **[32]** The submission for the defendant that, it was necessary to prescribe Blocadren for the deceased's condition is therefore not well founded. Even accepting that the deceased's condition was such that she had to be given medication, it has not been the case for the defendant that there were no alternatives to Blocadren or that any alternative would be subject to the same E contra-indications as Blocadren.

[33] In the event, I would hold that the defendant had failed to show that it was necessary to prescribe Blocadren as opposed to some other medication, be it a beta-blocker or non beta-blocker. F

[34] If the cause of death is severe asthma attack, I would find for the plaintiff on this issue. If the cause of death were not, then it is irrelevant.

G CAUSATION

[35] On the issue of causation, the case for the plaintiff is that the deceased was prescribed Blocadren, a beta-blocker that has the effect of blocking medication prescribed for asthma from performing their desired function, H and as a result the deceased died from a severe asthma attack after she had taken ¼ tablet of Blocadren as prescribed.

[36] The evidence before the court points to the fact the deceased had a severe respiratory attack. The undisputed description of her actions while I being driven to hospital is consistent with the actions of someone struggling to breathe. The deceased collapsed and upon revival remained in coma until her death. No other cause of death is indicated. Thus, it is safe to conclude that the collapse and coma of the deceased resulted from inability to breathe, consistent with a severe respiratory attack.

[37] The germane question is what the respiratory attack and what triggered it, or if the respiratory attack occurred of its own, what prevented medication if she had any from having effect. A

[38] There is no evidence that Blocadren itself causes or triggers respiratory or asthma attacks. Dr MK Rajkumar (DW5) testified he could not find anything in medical literature regarding Blocadren causing such a condition. Dr I Kuppusamy (DW6), a consultant respiratory physician, gave testimony to similar effect. There is no evidence before the court that the deceased had an allergic reaction to Blocadren. It cannot be safely said therefore that the Blocadren prescribed in this case triggered the attack that led to her collapse, coma and eventual death. If there is almost no known risk the Blocadren could cause a severe allergic reaction, there is no duty to warn the deceased. This question is also irrelevant because there is no evidence it was in fact the Blocadren that caused the deceased's condition. B C D

[39] The deceased had a history of respiratory problems, specifically asthma. Witness Anne Kerr (PW1) is the mother of the deceased. She said the deceased was first diagnosed with asthma when she was five years old and between then and 1990 the deceased had been to clinics for treatment. On the evidence it is probable the deceased had an asthma attack. E

[40] According to PW1, the deceased always carried 'Ventolin'. She was prescribed 'Ventolin', 'Bricanyl' and 'Ativan' by Dr Jagjit Singh (PW3). Ventolin is a beta agonist, as is Bricanyl. It relaxes the smooth muscle in the airways which allows air to flow in and out of the lungs more easily. It is used to treat or prevent bronchospasm in people with reversible obstructive airway disease. It also used to prevent exercise-induced bronchospasm, chest pain, fast, pounding or uneven heart beats, tremor, nervousness, shortness of breath, or high blood pressure occurs after taking Ventolin. F G

[41] As a beta agonist, its effect could be blocked by a beta-blocker, but Ventolin itself does have the side effects above. Many of these side effects were the very same symptoms PW1 in examination-in-chief testified to as described by her daughter. It does raise the unanswered question whether it is something other than the Blocadren that was the culprit of the attack. H

[42] Ativan is prescribed for nervousness or anxiety, the very symptoms PW1 noticed that day. It could repress or depress respiration. This is from the testimony of PW3 who prescribed it to the deceased the day before. I note while ten tablets had been prescribed only eight was accounted for. Although PW1 said she advised her daughter not to take Ativan, it cannot be ruled out she had not taken one in the circumstances. I

A **[43]** According the case notes of PW3, the prescription was given to treat upper respiratory tract infection. He had not diagnosed asthma. There is no dispute that Ventolin and Bricanyl could be given to patients not necessarily suffering from asthma. The logic appears to me to be made that these beta agonists relaxes the muscles of the airways to make breathing easier and
B therefore efficacious in asthma as well as respiratory tract problems affecting breathing. But even Dr Damodaran (PW5) would not link straightaway particular medication with what led to her condition of severe breathing difficulty.

C **[44]** No records from the Pantai Medical Center or elsewhere the deceased was admitted to before her death was tendered to show whether it was Blocadren or other medication that had caused the eventual death, or what actually caused the attack that caused the death.

D **[45]** Further, other than PW1 testimony that the deceased always carried Ventolin, there is no evidence that she had in fact tried to use it after taking the Blocadren that evening in order that one could safely say that upon a balance of probabilities it was the Blocadren that blocked the deceased's medication for asthma, because the respiratory difficulties being the result of
E Ativan being taken cannot be ruled out.

[46] In the event, I cannot conclude that upon a balance of probabilities it was the Blocadren that prevented medication having effect for the attack
F suffered by the deceased.

FORESEEABILITY

[47] It was submitted that assuming caustion is proven the violent reaction
G was not reasonably foreseeable at the time that the Blocadren was prescribed. Counsel relied upon *Bolton & Ors v Stone* [1951] 1 All ER 1078. But to my mind, without the defendant finding out whether the deceased had asthma, how serious, how often and how recent she had it, it would be impossible to determine whether what actually occurred, assuming causation was proven,
H was not foreseeable. I cannot in the circumstances make any conclusion thereon.

[48] The plaintiff's action, is therefore, dismissed with costs.

I **[49]** Mr Americk Sidhu, counsel for the plaintiff had requested for the written judgment to deal with the question of damages. Mr PS Ranjan for the defendant thought it unnecessary. I had considered acceding to Mr Americk Sidhu's request since after all the parties had submitted upon it. In drafting grounds on damages, I found that it would become necessary to make

assumptions generally contrary to the decision above. It would be purely hypothetical. I found I am led to the conclusion that it is not time usefully employed and it serves little if any useful purpose to write upon grounds not necessary for a decision.

[50] In the event, I have decided to leave out my thoughts on the issue of heads of damages.

Plaintiff's action dismissed with costs.

Reported by Kanesh Sundrum